the Land Acquisition Act, 1870, do not need to be registered. (G. Rs. Nos. 2766, dated 6th April 1883, 3025, dated 18th idem, and 9767, dated 24th December 1889.)

4. Receipts for sums of Rs. 100 or upwards paid to occupants of lands purchased for forest purposes should be registered, the charge of registration being met from the sum sanctioned by Government for taking up the lands. (G. R. No. 5175, dated 24th June 1885.)

5. Receipts passed by a mortgagee for payments made to him by his mortgagor in liquidation of the mortgage-debt do not require to be registered under clause (*b*), Section 17 of Act III of 1877, because the payments do not operate to affect the mortgagee's interest in the land; they merely reduce the sum due on the mortgage. (G. R. No. 2766, dated 6th April 1883.)

6. The registration of awards made under the Land Acquisition Act is not compulsory, but is only optional under the terms of clause (*i*) of Section 17 and clause (*f*) of Section 18 of the Indian Registration Act, 1877. (G. R. No. 1978, dated 13th March 1889.)

XII.—IDENTIFICATION OF EXECUTANTS, &c.

1. The Governor in Council desires specially to call the attention of all Registrars and Sub-Registrars to Rule* 39 of the Rules framed under Section 80 of the Registration Act, 1866, and to impress upon all Registering Officers the evils that might arise from any case in which a false personification had been admitted, and the hardships that might ensue therefrom in after years to the person or persons thus falsely personified, or their heirs. All Registering Officers should, before ordering registration of any document presented for registration, satisfy themselves, as thoroughly as possible, of the identity of the executants and securities. (G. R. No. 2808, dated 22nd July 1868.)

* *Vide* Rule 58 of the Rules under the Indian Registration Act III of 1877 printed at pp. 349-374 of the Compilation of General Rules.

2. Although the Registering Officer must satisfy himself as to the identity of the person admitting execution, care should be taken that he does not require evidence which cannot reasonably be expected, and the Inspector General of Registration should do all in his power to prevent unnecessary inconvenience being caused on this account. (G. R. No. 158, dated 9th January 1883.)

3. There is no authority for compelling executants to bring witnesses to identify from a distance, if such evidence as would satisfy a Court of Justice can be obtained on the spot. The inconvenience and cost of registration should not be increased by an unreasonable view of the requirements of the law and rules. (G. R. No. 8232, dated 8th November 1883.)

XIII.—INTERPRETATIONS AND LEGAL OPINIONS.

1. (*Section 3*).—It would seem to be difficult to frame a definition of 'moveable' and 'immoveable'

property suitable for practicable use on a mere consideration of the physical nature of the property. It would appear to be necessary to take into account also the way in which the property is regarded and dealt with at the time of the transaction, and this is apparently what the framers of the Indian Registration Act, 1877, meant to do by using the words 'standing timber' in contradistinction to 'trees.' Certain trees being almost invariably used as timber, are commonly spoken of as 'timber trees.' But probably most trees would admit of being used both as timber and for other purposes. Thus, properly speaking, almost every tree being potentially timber and no tree actually timber, the question whether a tree is for the purposes of any transaction to be deemed to be 'timber' must depend upon the way it is regarded and treated in that transaction. If, for example, trees are sold with a view to their being cut down and removed, the sale is one of 'standing timber' within the meaning of the Registration Act. If, on the other hand, trees are sold with a view to the purchaser keeping them permanently standing and enjoying them by taking their fruit or otherwise, the sale would not, it is believed, on any construction of the Act, be regarded as one of 'standing timber,' but would be a sale of immoveable property. (G. I., H. D., No. 49—1812, dated 31st October 1884; *vide* G. R. No. 9211, dated 21st November 1884.)

2. The definition of immoveable property given in Section 3 of the Registration Act (III of 1877) must alone be looked to in determining, for the purposes of that Act, what is and what is not immoveable property.

'Ferries' are expressly included within the definition. A ferry is an exclusive right to carry persons and their goods across a river and to take payment for the service rendered. 'Tolls,' as they exist in this Presidency, are simply taxes on traffic on roads and bridges. There is no substantial similarity between ferries and tolls, and as 'tolls' are not specially named in the above definition, the fact that ferries are named therein affords no argument that tolls must be meant to be included also.

Tolls can only be held to fall within the definition if they are 'benefits to arise out of land.' This they cannot reasonably be said to be; they are simply taxes imposed under the authority of a legislative enactment, on traffic, and there is no more reason for classing them as immoveable property for the purposes of the Registration Act than for including ábkári and opium taxes in the same category. (L. R. No. 981, dated 23rd July 1884; *vide* G. R. No. 6268, dated 4th August 1884.)

3. Wharfage fees are not immoveable property as defined in Section 3 of Act III of 1877. (L. R. No. 1109, dated 20th September 1881; *vide* G. R. No. 5649, dated 28th idem.)

4. (*Section 5*).—The third paragraph of Section 5 of the Registration Act, III of 1877, very clearly

provides that territorial changes shall take effect, *after the date of the* notification, on a day to be mentioned therein. In the face of this enactment, it is not possible for Government, by notification, to sanction or give validity to such changes retrospectively. (L. R. No. 846, dated 7th July 1886; *vide* G. R. No. 5028, dated 14th July 1886.)

5. (*Sections 23, 24 and 34*).—A document presented under Section 23 of the Indian Registration Act must be admitted free of penalty within the 4 months allowed by that section, and with penalty within 8 months under the terms of Section 34. A document presented with penalty under Section 24 may be admitted at any time free of further penalty within the 8 months allowed by that section, and with penalty after the 8 months have elapsed up to 12 months under Section 34. So that documents must be admitted within the 4 months to be free of all penalty, within 8 months with one penalty and within 12 months with two penalties. (G. R. No. 158, dated 9th January 1883; G. I., H. D., No. 36-1174-85, dated 1st September 1883; *vide* G. Rs. Nos. 7507, dated 8th October 1883, and 8853, dated 11th November 1884.)

*Cf. Sec. 25 of Act III of 1877.

6. (*Section 25*).—"Section 25* of Act VIII of 1871 makes special provisions for the registration of documents executed out of British India, and shows, therefore, that the fact of a document having been so executed is no bar to its registration.

"The Registration Act does not require the Registering Officer to enquire into the sufficiency or validity of the stamp borne by any document presented to him for registration; but Section 18† of the General Stamp Act provides that 'no instrument chargeable with stamp duty * * * shall be registered by any officer acting under any law for the registration of assurances * * * unless such instrument bears a stamp of a value not less than the amount of the duty with which it is chargeable under any law in force in British India at the time of its execution.'

†Cf. Sec. 34 of the Indian Stamp Act, 1879.

"The question is, therefore, whether the bond referred to by the Collector was chargeable with stamp duty under any law in force in British India at the time of its execution.

"The bond appears to have been executed in the Nizam's territory and is, therefore, governed by the law of that territory as to the stamp it ought to bear (see VII Bom. H. C. R., 140, A. C. J.) and it is no part of the duty of the Registering Officer to ascertain whether the requirements of that law have been fulfilled or not. But if the bond relates to some property in British India, it is liable to stamp duty under Section 4,‡ Act XVIII of 1869, also, and it is incumbent upon the Registering Officer to refuse to register it unless it bears the proper British Indian stamp." (L. R. No. 489, dated 20th May 1876; *vide* G. R. No. 3273, dated 2nd June 1876.)

‡ Cf. Sec. 5 (c) of the Indian Stamp Act, 1879.

7. (*Section 27*).—A Collector having raised the question whether the execution of two documents, each

creating an interest under Rs. 100 in immoveable property, in place of one document for the total amount, is not a contravention of Section 27 of the Stamp Act rendering the documents inadmissible in evidence, the following opinion (No. 1029, dated 21st September 1888) was recorded by the Remembrancer of Legal Affairs :—

"It is very possible that the object of executing two documents instead of one was to avoid the expense, as well as the publicity of registration.

"But Section 27 requires only such facts and circumstances as affect the chargeability of an instrument with *duty* to be set forth.

"'Duty' is the amount chargeable under Schedule I of the Stamp Act, and does not include registration fees which are levied not as a source of revenue, but for services performed and benefits received.

"The provisions of Sections 49 and 50 of Act III of 1877 declare the consequences of non-registration.

"Each of these documents creates an interest under Rs. 100 in value. Neither of them is inadmissible in evidence to prove either of such charges. But neither of them would avail against a registered mortgage, and their separate operation is quite different from what the effect of one mortgage for their combined amount would be. A mortgage for the combined amount would be indivisible, whereas each of these mortgages may be separately redeemed.

"As they do not profess to operate as *one* document for the combined amount would operate, there is nothing to prevent their admissibility in evidence though their *operation* is subject to the provisions of the Registration Act giving preference to any registered charges in existence relating to the same property."

(G. R. No. 7000, dated 20th October 1888.)

8. (*Section 33*).—Section 33, clause (*c*) of Act III of 1877 does not require that the (registration) power of attorney in cases in which the principal at the time of execution resides in a Native State should be executed before a British Court, Judge or Magistrate, but before *any* Court, Judge or Magistrate. A power of attorney executed before and authenticated by a Native Court, Judge or Magistrate of a Native State should, therefore, be accepted by the registering officer. (L. R. No. 594, dated 9th May 1885 ; *vide* G. R. No. 4172, dated 23rd idem.)

9. (Part X).—A question having been raised whether a party consenting, in writing below a deed primarily executed by another party, to the contents of that deed should be viewed as an executant thereof, the following opinion (No. 1112, dated 24th August 1887) was recorded by the Remembrancer of Legal Affairs :—

"In the document, of which a translation has been sent to me, R has not executed the principal instrument in which H sells certain property. But he has executed a second instrument whereby he gives his assent to H's sale, and if he chooses to register this second instrument he is at perfect liberty to do so.

"His registration, however, of the instrument executed by himself cannot have the effect of making H's instrument 'a registered document' for the purposes of Part X of the Registration Act, albeit it may be necessary to copy it out

under Section 52, as forming an integral part of R's instrument.

"When endorsing registration on the document, the Sub-Registrar should, I think, make it clear that it was R's instrument that was registered and not H's."

(G. R. No. 6128, dated 10th September 1887.)

10. (*Section 75*).—On comparing the provisions of the new Registration Act III of 1877 with those of the last one (VIII of 1871) it appears that the powers of a Civil Court with which a Registrar is now invested by Section 75 of Act III of 1877 are new. Section 36, on the other hand, is the same in both Acts. If, therefore, it had been intended that the issue of process by Registrar, when acting under Section 75 of the new Act, should be done vicariously as in the instances for which Section 36 provides, it would have been so stated. Nothing could have been easier than to state that the Registrar should obtain the issue and enforcement of summonses, &c., in the manner prescribed by Section 36. In the absence of any such provision, it seems that Section 75 of Act III of 1877 must be interpreted quite independently of Section 36. Another reason which leads to this opinion is that clause 4 of Section 75 provides in itself complete powers for procuring the attendance of witnesses and requiring them to give evidence without reference to any other authority. For the purpose of any enquiry under Section 74, the Registrar is invested with the powers of a Civil Court (whose functions he is in fact now required to discharge, subject to a right of action against his order), and he should exercise those powers, as a Civil Court does, through the agency of his own subordinates. (L. R. No. 1125, dated 28th September 1877; *vide* G. R. No. 6063, dated 8th October 1877.)

11. Section 75 of the Act provides that the Registrar may summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court. It also provides that he may direct by whom the costs of the enquiry shall be paid, and that such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure. When a Registrar directs that the costs of an enquiry under Section 74 of the Registration Act shall be paid by a certain party, he should proceed, as if he were a Civil Court, to recover the costs by the agency of his own establishment, and should follow as nearly as possible the procedure laid down in the Civil Procedure Code. The Registration Act contains no provision for enabling the Registrar to send his order to a Subordinate Judge for execution. The Registrar himself has the powers of a Civil Court. The only case in which a Registrar could send his order for execution to any other Court would be when the order could not be executed within his own district, for which case provisions are made in Section 223 of the Civil Procedure Code. (L. R. No. 314, dated 4th April 1878; *vide* G. R. No. 1882, dated 12th idem.)

12. A question having been raised as to how a direction made by the Registrar of Bombay, under Section 75 of the Registration Act, 1877, for the payment of the cost of an enquiry held by him under Section 74, should be executed, the following opinion (No. 78, dated 1st December 1886) was recorded by the Advocate General :—

"The High Court and not the Small Causes Court is the proper Court to execute the Registrar's direction as to costs, inasmuch as the 'case' was not one 'cognizable' (which I interpret to mean 'cognizable' *quoad* the 'cause of action' and not the amount of costs to be recovered) by the latter Court.

"The proper course accordingly is for the decree-holder or his attorney to apply to the Sitting Judge of the High Court in Chamber, under Rule 10 (sub-clause 'J'), upon notice to the Prothonotary, for the issue of an order for execution. The Registrar should also be notified to produce the proceedings upon such application.

"There can be no objection to the decree-holder or his attorney being informed to the above effect, and it will be for them to move in the matter as disposed or advised."

(G. R. No. 8709, dated 10th December 1886.)

13. (*Section 82.*)—"An agriculturist executed a document compulsorily registrable under Section 11 of Act XXIII of 1886, amending Chapter VIII, Section 63 of Act XVII of 1879 (the Dekkhan Agriculturists' Relief Act). Such documents have to be produced before a Sub-Registrar who is then bound to act in accordance with the procedure prescribed for a Village Registrar (*vide* Section 11 of Act XXIII of 1886 and Section 59 of Act XVII of 1879).

"Rule 15B made under Section 61 of Act XVII of 1879 (the Dekkhan Agriculturists' Relief Act) is published at page 1147 of the *Bombay Government Gazette* for 1884 (Notification No. 8423).

"It requires the Village Registrar to enquire and ascertain whether the instrument about to be executed will modify or wholly or partly supersede any previous instrument, and if the parties answer in the negative, the Village Registrar will make an endorsement accordingly.

"In the case now under reference, the intending executant was accompanied to the Sub-Registrar's office by one R., the *brother* of S., the person in whose favour the document was to be executed.

"R. gave his name as S., and assured the Sub-Registrar that the intended document would not affect any previously executed document.

"It appears that R. had no dishonest motive. But as Section 57 as amended by Section 13 of Act XXIII of 1881 requires any relation of an obligee so appearing to produce a power of attorney, R. seems to have personated his brother merely to save trouble and expense.

"The Inspector General seems to think that Section 63 A of the Dekkhan Agriculturists' Relief Act (*vide* XXIII of 1886) is incorporated by reference in the Registration Act III of 1877, and that, therefore, such false personation or statement is

punishable under Section 82 of the Registration Act.

"The Sessions Judge held that Section 82 of Act III of 1877 applied only to proceedings or inquiries under that Act, and not to proceedings, &c., under the Dekkhan Agriculturists' Relief Act.

"This finding seems reasonable.

"It is further to be noted that Rule 15 B, under which a statement of the nature made by R. is required, is made under Section 61 of Act XVII of 1879.

"No penalty could attach to a false answer to any inquiry under that rule—

(*a*) because Section 61 of Act XVII of 1879 empowers the Inspector General to make rules only to regulate the proceedings of his subordinates and not to impose duties on the public;

(*b*) Rule 15B prescribes only the duties of the Village Registrar, and no provision of law imposes a corresponding duty on the person interrogated.

(*c*) Section 63A (Section 11—XXIII of 1886) merely imposes additional duties on the Registrar under Sections 57 and 59 of the Dekkhan Agriculturists' Relief Act, and does not make those inquiries a part of the Registration Act III of 1877, which is only to be followed *after* the procedure prescribed by the Dekkhan Agriculturists' Relief Act has been followed.

"For these reasons I do not think any offence has been committed under the Registration Act.

"The High Court would, I think, certainly decline to exercise revisional powers in such a case, and if an appeal were made, I think, it would fail.

"The Inspector General says this case is one of little moment, and apparently there was no *mala fides*.

"I do not think, therefore, any steps should be taken to interfere with the Sessions Judge's decision.

"I do not think that in this case a conviction could be had under Section 182, Indian Penal Code, as the intention of the accused was to save himself and his brother trouble, and not to cause the Registrar to do what he ought not to do.

"Should any case of real *mala fides* occur in future, such as the Inspector General suggests in paragraph 3 of his letter, I think that Section 182 and Section 471 of the Indian Penal Code would be the appropriate sections under which a conviction might be obtained." (L. R. No. 1008, dated 14th September 1888; *vide* G. R. No. 6676, dated 6th October 1888.)

14. (*Section 90d*).—A question having been raised whether the ninety-nine years' leases issued to villagers for land in the village gáonthán̈s require to be registered or not, the following opinion (No. 139, dated 31st January 1888) was recorded by the Remembrancer of Legal Affairs:—

"I do not think that leases by Government in the form forwarded require registration. The form simply evidences the grant by Government of an interest in land, and is, therefore, exempt from registration under Section 90 (*d*) of Act III of 1877.

"I observe, however, that the Inspector-General's letter No. 108 of the 27th May refers to kabuláyats executed by the lessees. No specimen of these has been sent to me, and without seeing one I can express no opinion as to the necessity, or otherwise, of registration.

"At the same time I doubt whether there is any necessity to take any kabuláyats at all. It seems to me that if the signature of the lessee were simply taken in a register acknowledging that he had received a lease in the prescribed form, but containing no promise to abide by its terms, it would for all practical purposes afford sufficient proof of his acceptance of the lease and avoid all difficulties about registration."

(G. R. No. 1309, dated 24th February 1888.)

15. (*Sections 90, 91.*)—An inámdár may do as he likes with his own private records. He can allow inspection of them or not, and give copies of them or not, as he pleases, and charge whatever anybody will agree to pay for any privilege he may allow him.

But Sections 90 and 91 of the present Registration Act (III of 1877) certainly do not apply to private but to public records. The records to which they refer are:—

(*a*) Documents which form part of the records of a land-revenue settlement,

(*b*) Documents and maps which form part of a survey record,

(*c*) Documents which under any law for the time being in force, are filed periodically in any revenue office by any officers charged with the preparation of village-records, and

(*d*) Registers of sanads, inám, title-deeds, &c.

It seems that no documents of the class (*c*) exist in this Presidency, and the documents named in classes (*a*), (*b*) and (*d*) are all public documents, and cannot, in any case, be the property of Inámdárs. Any of them which may happen to be prepared by hereditary officers are distinctly declared by Section 70, Bombay Act III of 1874, to be the property of Government, but for the most part these documents appear to be such as would be prepared by the Survey Department or in the Collector's or Mámlatdár's offices.

There is no legal sanction for the levy of fees for the inspection or grant of copies of any village records other than those comprised in one of the four classes named in the last paragraph, but it is of course competent to Government to authorize the charging of such fees as they deem fit for any copy of a public record, or for any inspection of a public record which they allow to be had or made. All fees so charged must unquestionably be credited to Government. If in any case an Inámdár, or the agent or servant of an Inámdár, is an officer of Government, and in his official capacity has charge